IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**ORDER**

S.B.CRIMINAL REVISION PETITION NO. 707/2007

(Shanker Lal @ Shanker Ram & Ors. Vs. State of Rajasthan)

Date of Order : 17.08.2007

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Dr. S.S.Jodha for the petitioners.
Mr. V.R.Mehta, public prosecutor for the State.

**BY THE COURT**:-

By the instant criminal revision petition under Section 397/401 Cr.P.C., the petitioner has challenged the orders dated 18.7.2007 and 20.7.2007 passed by Additional Sessions Judge No.1, Jodhpur (for short 'the appellate court' hereinafter) whereby the appeal filed by the petitioners against the judgment and order dated 15.5.2007 passed by Judicial Magistrate No.7, Jodhpur (for short 'the trial court' hereinafter) on being transferred by the Court of Sessions Judge, Jodhpur to the appellate court for hearing the appeal on merit, was dismissed as not pressed. It appears from the order dated 18.7.2007 passed by the appellate court that all the appellants -petitioners were present before the Court and without inquiring from the accused appellants as to whether they do not press the appeal on merit

or wish to address the Court on merit, on the saying of the counsel representing the appellants, dismissed the appeal. From the perusal of memo of appeal, it appears that appeal filed by the petitioners was titled as Shri Shanker Ram and Others in all five accused appellants naming them on last page of memo of appeal. Though, technically it appears to be an appeal by Shanker Ram but in fact appeal has been filed on behalf of all the petitioners. It appears that the counsel had no such instructions to not press the appeal for the reasons that the accused who were present before the appellate Court at the relevant time, immediately moved an application through counsel that the appellants never instructed their counsel to not press the appeal but intended that the appeal be argued and decided on merit. Despite the application by the accused appellants simultaneous to that of the statement of counsel to the effect that he does not want to press the appeal, the appellate court did not hear the appeal on merit and maintained the order of dismissal of the appeal only on the ground that the counsel did not press the appeal. From the order, it appears that the appellants never had intention not to press the appeal. On the contrary,they have been vehemently challenging the order under appeal. The application filed by accused appellants before the appellate court on the very day i.e. 18.7.2007 was not decided by the appellate court on the same day, on the contrary

posted to 20.7.2007 and on 20.7.2007 that application again came to be dismissed as not pressed.

Learned counsel for the petitioners submits that it was a first appeal against the judgment of conviction and order of sentences and therefore, the law enjoins duty upon the appellate court to dispose of the appeal on merit by re-appreciating the evidence as the appellants have right to address the Court and seek re-appreciation of the evidence adduced before the trial court against the judgment of conviction and order of sentence. Learned counsel for the petitioner has relied on a three Judge Bench decision of Hon'ble Supreme Court in Bani Singh and Ors. Vs. State of U.P. 1996 Cr.L.R. (SC) 714 wherein the Apex Court held that the law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record.

In the instant case, the petitioners were tried by the trial court in Cr. Case No.139/05 for the offences under Sections 447, 148, 323, 325 and 325/149 IPC. The trial court convicted the appellants-petitioners for the offences noticed above and passed various sentences including the sentence of imprisonment varying from one month to six months as also

amount of fine. On an appeal, the appellate court even did not care to peruse the record and examine reasoning given by the trial court. In my view, the approach of the appellate court is contrary to the settled provisions of law. It was a first appeal against the judgment of conviction and sentence and the duty cast on the appellate court under Section 386 Cr.P.C. is to peruse the record, re-appreciate the evidence on record and then to satisfy itself as to whether the reasoning and the finding recorded by the trial court is in consistent with the record and law which the appellate court utterly failed in this case and therefore, the order impugned deserves to be set aside and the matter deserves to be remanded to the appellate court.

In Shyam Deo Pandey and Others Vs. The State of Bihar AIR 1971 SC 1606, the Hon'ble Supreme Court while considering the provisions of Section 423 of the Criminal Procedure Code, 1898 (for short 'the Old Cr.P.C.' hereinafter) corresponding to Section 386 of the Code of Criminal Procedure, 1973 (for short 'the New Code' hereinafter) held that the requirement regarding the perusal of the record that has been sent for and received in the Court before disposing of an appeal cannot be treated as an empty formality. A perusal of the record of a particular case and giving indication of such perusal in the order or judgment is a must before dismissing an appeal. It has further been held that even where parties have been heard no

order of dismissal can be passed without a perusal of the record.

In the New Code, Section 384 deals with dismissal of appeal summarily which provides that if upon examining the petition of appeal and copy of the judgment received under Section 382 or Section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily provided that no appeal presented under Section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

In the instant case, when the appellants-petitioners were present in the Court and as noticed above they had never authorized their counsel to not to press the appeal against the judgment of conviction and order of sentences, in my view, it was not open for the appellate court to dismiss the appeal as not pressed. The appellate court ought to have exercised the power conferred under Section 386 Cr.P.C.

In the result, the revision petition is allowed. The orders impugned dated 18.7.2007 and 20.7.2007 passed by the Additional Sessions Judge No.1, Jodhpur in Criminal Appeal No.58/07 is set aside and the appeal filed by the appellant-petitioners before the appellate court being Appeal No. 58/2007 is restored and matter is remanded to the appellate court to hear the appeal on merit treating the appeal filed by all the five

accused persons who have been convicted and sentenced by the trial court vide order dated 15.5.2007, if need be by taking amended cause title of the appeal and decide the appeal on merit. The record of the trial court be returned forthwith. Since the revision petition has already been decided, the bail application has become infructuous and is therefore disposed of.

**(H.R.PANWAR),J.**

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